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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re H.M., a Person Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

A.S.,

Defendant and Appellant.

G057128

(Super. Ct. No. 17DP0280)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Sherri L. Honer, Judge. Affirmed. Request for Judicial Notice. Granted. Request for Judicial Notice of Postjudgment Evidence. Denied.

Lelah S. Fischer, under appointment by the Court of Appeal, for Defendant and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Jeannie Su, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minor.

* * *

INTRODUCTION

Appellant A.S. (Mother) is the mother of H.M., who was born in 2006 and taken into protective custody in March 2017 when he tested positive for benzodiazepine. A.M. (Father) is the father of H.M. In this appeal, Mother challenges the juvenile court's orders denying two petitions to change court order placing H.M. with Father pursuant to Welfare and Institutions Code section 388.¹

Custody of H.M. was vested with Father following a lengthy dispositional hearing. We affirmed the dispositional order in a nonpublished opinion, *In re H.M.* (May 18, 2018, G055484) (*H.M. I*). While that appeal was pending, Mother brought a petition to change court order to modify the dispositional order to vest custody of H.M. with her under a family maintenance plan or with her parents (Maternal Grandparents). The change in circumstance, Mother alleged, was Father's efforts to alienate H.M. from Mother once Father had obtained custody. The juvenile court denied the petition without an evidentiary hearing. In *In re H.M.* (July 16, 2018, G055754) (nonpub. opn.) (*H.M. II*) we reversed because Mother had made a prima facie showing sufficient to afford her an evidentiary hearing limited to the issue of whether any alienation from Mother was caused by Father and, if so, to determine the appropriate remedy.

While the appeal in *H.M. II* was pending, Mother brought a second petition under section 388. The changed circumstance, Mother alleged, was she had taken a polygraph test, the results of which established she did not give H.M. the benzodiazepine.

The juvenile court conducted an evidentiary hearing on Mother's second section 388 petition. After we issued our opinion in *H.M. II*, the parties stipulated the hearing would also encompass Mother's first section 388 petition. At the conclusion of the ten-day hearing, the juvenile court denied a change in H.M.'s custody. The order also

¹ Undesignated code sections are to the Welfare and Institutions Code.

included new orders and requirements for visitation and therapy intended to repair the broken relationship between Mother and H.M.

We conclude Mother proved a change in circumstances in both of her section 388 petitions. Mother's polygraph test results undermined the basis for the juvenile court's decision to vest custody with Father. H.M. has suffered parental alienation from Mother that has worsened so dramatically while he has been in Father's custody that he no longer wants to see Mother and is hateful toward her.

But, we conclude, the change in custody sought by Mother would not be in H.M.'s best interest. The juvenile court considered both the risk of harm to H.M. from parental alienation and the risk of harm from removing H.M. from Father's custody. The court's order reflects a belief and hope that the relationship between H.M. and Mother can be repaired without taking the potentially damaging step of changing custody. We find no abuse of discretion and affirm, but with the advisement that if there is no substantial improvement in the relationship between H.M. and Mother within a reasonable period of time, the juvenile court must consider a change in custody.

FACTS

I. Prior Opinions

Three prior unpublished opinions set out the background facts and procedural history of this dispute. In *In re Marriage of A.M.S. and A.C.M., Jr.* (May 20, 2016, G051533), we recounted the facts of the marital dissolution leading to the custody dispute. In *H.M. I*, we recounted the history through September 13, 2017, when the juvenile court made its jurisdictional/dispositional order. In *H.M. II*, we picked up the narrative where *H.M. I* had left off and ended with the December 2017 order denying Mother's section 388 petition. In *H.M. II*, we addressed the Evidence Code Evidence Code section 730 evaluation of Mother prepared by Dr. Bosch, the allegations of Mother's section 388 petition, and the evidence Mother submitted in support of that

petition. We grant Mother's request to take judicial notice of the opinions in *In re Marriage of A.M.S. and A.C.M., H.M. I*, and *H.M. II*. (Evid. Code, §§ 452, subd. (d), 459, subds. (a)-(c).)

II. Orange County Social Services Agency Reports

From March 2018 through late November 2018, Orange County Social Services Agency (SSA) submitted a Status Review Report dated March 7, 2018 and nine addendum reports. We relate the contents of those reports by topic.

A. H.M.'s Health and Well-Being

H.M. had no medical, developmental, or educational concerns while in Father's custody. H.M. said he felt happy and safe with Father and wanted to continue living with him. H.M. has close friends. H.M. enjoyed his classes at school and had earned a 4.0 GPA in the 2017-2018 school year. H.M. was excited to play baseball. At games, Mother would sit on the opposite side of the field from Father.

In September 2018, Father reported that he had taken H.M. and his siblings out of school for several days due to an incident involving H.M.'s five-year-old brother, M.M. The assigned social worker learned that another boy in M.M.'s kindergarten class had threatened to shoot M.M. with a gun. The school principal spoke with the child's mother, who said there were no guns in the home and the child had no access to guns. The sheriff's department investigated the matter and did not ascertain a threat. The child wrote an apology letter. Father pulled H.M. out of school without authorization even though he did not attend the same school as M.M. The school considered reporting H.M. as truant. Father later enrolled H.M. in independent study.

B. Visits With Mother

Mother continued having four-hour supervised visits with H.M. every other weekend. Father brought H.M. to the visits. The visits at first went well, but H.M. was often resistant to Mother's affection and attempts to interact with him. He often was

eager to leave, asking repeatedly what time it was, looking to the parking lot for Father's car, and running to Father's car once he saw it.

The January 21, 2018 visit ended 10 minutes early because H.M. noticed Father's car in the parking lot. At the January 28 visit, H.M. avoided Mother's affection at the beginning of the visit but allowed her to be a bit more affectionate toward him as the visit progressed. For the last 15 minutes of the visit, H.M. kept looking at the parking lot waiting for Father to arrive. H.M. continued to bring his cell phone to visits. At the February 25, 2018 visit, H.M. was talkative and told Mother he loved her. However, when Mother tried to hug H.M., he resisted and said it was an "assault." The visit ended five minutes early when Father arrived.

The assigned social worker visited with Father and H.M. once a month at Father's home. During each visit, the social worker asked H.M. how visits were going, and H.M. replied he did not want to visit Mother. When asked why, H.M. said, "I just don't like it."

Starting in March 2018, visits became even more difficult. H.M. brought his cell phone with him to the visit on March 18 and received a call. Mother reminded H.M. he was not to have a cell phone with him and asked him to put it away. H.M. "remind[ed] Mo[ther] of a past incident where [H.M.] stated Mo[ther] attempted to poison him." H.M. refused to give Mother his report card because she would learn where he attended school. H.M. again told Mother that she had "tried to poison me." Mother replied, "that was not me." H.M. asked, "Th[e]n how did that stuff get in there[?]"

On March 25, 2018, Mother brought several gifts and two Easter cards for H.M. One card contained a statement ("I can't wait for you to come home") which the monitor said would have to be approved by the social worker before the card could be given to H.M. The other card only said, "Happy Easter. I love you H[M.], Mom." The monitor discussed the cards and their contents with Father when he arrived at the end of the visit. Father asked H.M. if he wanted the cards, and H.M. shook his head "no."

The visits thereafter got shorter and shorter because H.M. refused to stay. The April 8, 2018 visit was just after H.M.'s 12th birthday and Mother brought him cards and gifts. H.M. refused to stay longer than 34 minutes. He said he wanted to call Father and go home. The monitor called his supervisor, who said H.M. was "of age" and could decide whether to stay and could not be forced to stay at the visit involuntarily. The monitor called Father to come and get H.M.

The visit on April 22 went much the same way. At the outset, H.M. asked the monitor, "Do I have to be here?" and said, "I do not want to be here. I want to go home. Would you want me to see someone who hurts you?" H.M. repeatedly said, "I am of age. I do not want to be here with someone that [*sic*] hurts me. I want to go home." When Mother tried to hug H.M., he told her, "Don't touch me. I don't want to see you. Would you keep someone in your life who hurt you?" The monitor finally called Father to come get H.M. When Father arrived, he encouraged H.M. to tell Mother why he was choosing not to stay. H.M. walked over to Mother and told her, "I do not want to see you because . . . you hurt me, I do not trust you and I do not want to be here."

H.M.'s visits with Mother in May and June 2018 were about 15 to 30 minutes in length because H.M. refused to stay. During the visit on May 6, H.M. told Mother, "I already have a mom. My dad is my best friend. Why can't you just leave, I do not want to see you." H.M. also told Mother, "You went to jail because you hurt me." During the visit on May 20, H.M. refused to interact with Mother and left without saying goodbye to her. The visit on June 3 lasted only 15 minutes. H.M. again told Mother, "I don't want to see you. You hurt me." The visit on June 17 lasted 55 minutes. H.M. repeatedly stated that Mother had tried to poison him and that Mother was a liar. The visit on July 1 lasted only 10 minutes because H.M. did not want to stay.

Mother told the monitor that Father was "playing the system" and manipulating H.M. Father claimed he was encouraging H.M. to stay for the visits and had told H.M. he could not go to games if he did not do so. According to Father, H.M.

said it was not worth it. At one point, the social worker told H.M. that it had not been confirmed that Mother had tried to poison him. H.M. stated he knew it was Mother but could not explain how he knew.

On June 3, 2018, the assigned social worker spoke with Father about H.M.'s difficulty in forming a positive relationship with Mother. Father said H.M. was doing well in Father's home and the reason why H.M. did not want to see Mother was that "she poisoned him."

On June 26, H.M. told the assigned social worker he no longer wanted to visit Mother. He said that Mother was always taking Father to court and hurting him. When asked what he meant by saying Mother hurt Father, H.M. said he was "tired of it" and did not want to see Mother. H.M.'s visits with Mother in July and August 2018 were between six and 22 minutes in length. One visit was cancelled and rescheduled because Father took H.M. out of town. H.M. continued to bring his cell phone to visits and called Father to come get him.

The situation had not improved by September. On arriving at the September 9, 2018, visit with Mother, H.M. asked if he had to stay. Mother asked him to say "hi" to her. H.M. replied, "No! I don't wanna be here" and called Father on his cell phone to come get him. Father, who had not left the parking lot, picked up H.M. Mother told the monitor that behavior was unacceptable. The monitor called Father and talked to H.M., asking him to please just come say "hi" to Mother. When H.M. walked in, Mother said, "Hi. I love you with all my heart. It's my birthday and my wish is to see you and spend time with you!" H.M. replied, "I said 'hi' I'm leaving." H.M. asked Mother what it would take for her to leave him alone. Mother said she would never leave him alone because she loves him with all her heart.

As early as October 2017, H.M. told the social worker he did not want to visit the Maternal Grandparents. When asked why, H.M. said, "I just don't want to."

C. Mother's Polygraph Test

Mother underwent a polygraph test on June 14, 2018. The examiner was Louis Rovner, Ph.D. For the examination, Mother submitted a written statement that she did not give H.M. benzodiazepine in March 2017, she has never given H.M. benzodiazepine, she did not have any benzodiazepine in her home that H.M. might have ingested, and she knew of nobody other than Father and his current wife who could have given benzodiazepine to H.M. During the examination, Mother stated that her written statement was completely true, she did not deliberately lie in her written statement, and nothing in the written statement was "untrue."

Rovner concluded that Mother passed her polygraph test and answered the relevant questions truthfully. Mother's numerical evaluation score was +27. For her answers to be considered truthful, her score would have to equal or exceed +6. For her answers to be considered deceptive, her score would have to be -6 or lower. Rovner's report was attached as an exhibit to the SSA addendum report dated July 13, 2018.

D. H.M.'s Individual Therapy

The March 7, 2018, six-month review report stated that Father was active in enrolling and scheduling individual therapy sessions for H.M. in compliance with the case plan, but "[d]ue to issues with Medi-Cal, unfortunately there was a pause in therapy services." H.M. completed an intake therapy session on December 5, 2017 and had his first session before January 25, 2018. In January 2018, Father told the social worker that H.M. would resume therapy when Father's insurance was reauthorized.

H.M. had a total of three individual therapy sessions: the intake session in December 2017, one session in January 2018, and one session in April 2018. In May, H.M.'s therapist told the social worker that H.M. wanted no contact with Mother, was stable in his placement with Father, and did not meet the qualifications for behavioral services. The therapist closed H.M.'s case at the end of April 2018.

Several months later, in August 2018, Father told the social worker he had obtained a referral to a new therapist for H.M. Father left two messages for the new therapist but had not heard back. The social worker discussed with Father the goals for therapy, which were “to ensure [H.M.] did not display behavioral concerns of distress in regards to building a relationship with . . . [M]other.”

E. H.M.’s Conjoint Therapy With Mother

Mother and H.M. resumed conjoint therapy with Dr. Kenneth Meyer in October 2017. Mother and H.M. had previously completed four to five sessions of reunification therapy with Meyer as ordered by the family court.

Between October 4, 2017 and January 10, 2018, Mother and H.M. attended six conjoint therapy sessions with Meyer. Father failed to produce H.M. for an appointment on November 29 and claimed the transporter failed to confirm the appointment with him. The social worker told Father that all therapy sessions were to be completed even if the transporter did not confirm. Father said he understood. On December 22, 2017, Meyer reported that some progress had been made in conjoint therapy. H.M. was becoming more respectful towards Mother, and Mother was learning to control her emotions towards H.M. During the past session, H.M. was more open to Mother. Other therapy sessions were canceled for various reasons.

Conjoint therapy with Meyer resumed in April 2018. Father brought H.M. to his therapy appointment on April 10 but failed to produce him for the appointment on April 24. Father had requested confirmation calls from Meyer for all therapy sessions. Meyer had called Father to confirm the April 24 session but the number was out of service.

Father failed to produce H.M. for a conjoint therapy session on May 8. Father told the social worker he received no confirmation call from Meyer, so he did not bring H.M. to the session. The social worker contacted Meyer, who had tried to contact

Father on May 7, but the phone just continued to ring without going to voicemail. When Meyer contacted Father after the missed session on May 8, Father told him, “Even if you call, I’m not going to show up.” Meyer believed that Father’s lack of support was affecting H.M.’s relationship with Mother. Thereafter, the social worker confirmed conjoint therapy appointments with both Meyer and Father.

Meyer reported that during the April 10, 2018 session H.M. appeared to warm up to Mother and yet at times would not want to be near her. During that session, H.M. told Mother, “You tried to poison me.” When Mother denied poisoning him, H.M. said, “Then take a lie detector test.” Meyer reported that H.M. was “developmentally on target to understanding the complexity of relationships and that [he] should be completing individual therapy focusing on child and adolescence.” Meyer was concerned, however, that H.M. adamantly maintained that Mother had poisoned him. H.M. told the social worker he wanted to discontinue conjoint therapy because he did not want to see Mother anymore and he did not feel connected with Meyer.

In June 2018, Meyer informed the social worker that he had assessed H.M. as possibly having “a disorder of attachment” to Mother. Meyer was very concerned that H.M. was being told that Mother had poisoned him. H.M. continued to be very rude to Mother, identified his stepmother as his real mother, and continued to maintain that Mother was evil and had tried to poison him.

H.M. did not appear for conjoint therapy with Meyer on August 1 because H.M. was out of town with Father. Father brought H.M. to his August 14, appointment with Meyer. At that session, Meyer encouraged Father to support H.M. “in the progress of building a healthy relationship with [M]other.” Father was in agreement that H.M. should establish a relationship with Mother and stated he would encourage H.M. to attend and participate appropriately in therapy.

On August 31, 2018, the court granted Meyer’s request to be excused from the case. The minute order for that date notes that Meyer had mentioned throughout his

testimony that H.M. had lost confidence in him. The court commented, “over the long course of therapy there has been no improvement.” The social worker began looking for another conjoint therapist but had not found one by the time of hearings in November 2018.

F. Mother’s Individual Therapy

Mother continued attending weekly individual therapy sessions with he Dr. Lisa Grajewski. The goals of therapy were to maintain Mother’s health and manage anxiety. Mother was open during the therapy sessions, and Grajewski did not believe she was a detriment to H.M.’s well-being. Mother also met with her psychiatrist once a month. Mother was consistent in taking her psychotropic medications.

G. Father’s Individual Therapy

Attempts to find a Ph.D. level therapist for Father, as had originally been ordered, were unsuccessful. In December 2017, the court authorized Father to meet with a marriage and family therapist. In January and February 2018, Father completed three therapy sessions, but then, for insurance reasons, switched to a new therapist, Gina Weiss.

In May 2018, after Father had participated in five sessions, Weiss reported to the social worker that Father was not willing to have direct oral communication with Mother and their current means of communication were as civil as could be. Weiss reported that Father was calm in demeanor despite the frustration of years of custody proceedings. Weiss did not believe Father had an impulse control problem and did not “see a reason for [him] to be in counseling for the purposes put forth in the Case Plan.” Weiss believed Father was cooperating to the extent possible with the case plan “given the circumstances.”

On June 3, 2018, Weiss reported to the social worker that she was closing Father’s case because there were no goals for therapy. On June 11, she reported to the

social worker that Father had told her he did not discuss Mother with H.M., so H.M. was not exposed to “any negativity in the parents’ relationship on [F]ather’s end.” Father told Weiss that H.M. had said he felt betrayed by Mother.

H. Father’s Desire to Move out of the Area

In May 2018, Father informed the social worker that he was interested in moving his family to Henderson, Nevada, in the near future so he could pursue a job opportunity. In August 2018, Father informed the social worker he and his family were “in transition” to moving to Nevada. He had been asked to open a new brokerage branch there and hoped to move in October 2018. Father said that H.M. would attend a cystic fibrosis center in Las Vegas, Nevada.

I. Compliance With Case Plan and SSA Recommendations

The March 7, 2018 report described Mother’s compliance with the case plan as “adequate” and Father’s compliance as “substantial.” SSA recommended that H.M. remain in Father’s custody with continued services for both Mother and Father. SSA also recommended transferring the case to San Bernardino County, where Father lived. But in the addendum report dated August 24, 2018, SSA recommended terminating dependency proceedings with exit orders. That recommendation was carried forward into the later addendum reports.

MOTHER’S SECTION 388 PETITIONS

Mother’s first section 388 petition, filed in December 2017, was the subject of our opinion in *H.M. II*. In June 2018, before we issued our opinion in *H.M. II*, Mother filed a second section 388 petition. The second petition, as the first one, sought a new order immediately placing H.M. with Mother or placing H.M. with Maternal Grandparents and authorizing unmonitored visits for Mother. The second petition also

requested an order that “Father not be permitted to move out of state without notice to parties and order of the court.”

As change of circumstance or new evidence, Mother alleged: “Mother successfully completed and passed a polygraph test on June 14, 2018. The father failed to take [H.M.] to two (2) conjoint therapy appointments. [H.M.] is making statements that are ‘adult’ in nature regarding these court proceedings. Mother is being denied access to child’s medical appointments – [H.M.] has cystic fibrosis. [H.M.] is not in therapy. Father did not start therapy until 4/13/2018. Mother objects to this case being transferred to San Bernardino County. Parental alienation continues.”

Mother alleged the requested order would be better for H.M. because: “[H.M.] is being influenced by the father. Liberal contact with the mother is needed in order to begin to restore the mother-child relationship. The child had a strong, loving relationship with his mother prior to being placed with his father. It is the professionals’ opinion that [H.M.]’s separation from his mother i[s] not in the best interests of [H.M.]’s health, safety and welfare. [H.M.] is not getting medical, dental and psychological care he desperately needs.”

In support of the second section 388 petition, Mother submitted her own declaration and exhibits, including her polygraph examination results, the curriculum vitae of her polygraph examiner, a June 5, 2018, case report from Meyer, Bosch’s Evidence Code Evidence Code section 730 evaluation, two January 2017 letters from Meyer, photos of H.M. and Mother together, summaries of monitored visits between Mother and H.M., and the lyrics of a song H.M. asked Mother to replay repeatedly. The juvenile court found that Mother had made a prima facie showing of a change in circumstance or new evidence and ordered an evidentiary hearing on Mother’s second section 388 petition.

HEARING ON MOTHER’S SECTION 388 PETITIONS

The hearing on Mother’s second section 388 petition commenced on July 13, 2018 and continued over a total of 10 days until the court made its ruling on November 9. In August 2018, after we issued our opinion in *H.M. II*, the parties stipulated and the court agreed the hearing would serve as the evidentiary hearing on the first section 388 petition.

I. Evidence Presented at the Hearing

A. Exhibits

Over the course of the section 388 hearing, the juvenile court received in evidence the March 21, 2017 Detention Report, SSA’s Status Review Report dated March 7, 2018, and addendum reports dated April 24, May 9, June 19, July 13, August 24, and September 24, 2018. The court also received into evidence, among other things, Rovner’s curriculum vitae, Mother’s polygraph examination report, Meyer’s curriculum vitae, Meyer’s June 5, 2018 report, Bosch’s Evidence Code section 730 evaluation of Mother, Father’s polygraph examination report, visitation summaries prepared by the visitation monitor, and delivered service logs.

B. Witness Testimony

Meyer, Father, the assigned social worker (Victoria Ovieda), Mother, H.M.’s individual therapist (Mary Taboada), Weiss, and H.M. testified at the hearing.

1. Meyer’s Testimony

Meyer has been a licensed psychologist since 1989 and has worked with minors for over 25 years. He handles family reunification matters for family courts in San Bernardino, Riverside, and Orange counties. He has qualified as an expert therapist at least 20 times.

Meyer first became involved with the case in November 2016 to engage in reunification therapy for Mother and H.M. He was told this was a contentious case,

Mother and Father had difficulty coparenting H.M., and there were issues regarding interference in the parent-child attachment.

Meyer conducted 23 conjoint therapy sessions with H.M. and Mother. Father has not been cooperative with conjoint therapy. Seven therapy sessions were either cancelled or not held because Father did not bring H.M. to Meyer's office. This was disruptive of the therapy and suggested Father was not encouraging H.M. to have contact with Mother. Father insisted Meyer confirm appointments before bringing H.M. Father once said that even if Meyer called to remind him about appointments, he would not bring H.M. This issue was resolved through the social worker. Father allowed H.M. to attend the first therapy session wearing an iWatch phone, which was inappropriate and violated patient/therapist confidentiality. Meyer contacted the social worker about the matter.

Soon after reunification therapy began, Meyer made a note that H.M. had said he did not like Mother and did not want to visit her. H.M.'s feelings toward Mother have gotten worse. From September 2017 through July 2018, Meyer noticed H.M. had become less receptive to Mother and participated less in therapy. Meyer was initially able to develop a therapeutic bond with H.M., but as the case continued, their bond did not remain as strong as Meyer wished. Meyer described H.M.'s therapeutic bond with him as a "grudging therapeutic bond."

Meyer believed H.M. thought Meyer was more aligned with Mother, and H.M. transferred his feelings about Mother to Meyer. With Father's support for reunification, Meyer would be more effective over time. He felt encouraged by Father's statement a few weeks earlier that Father supported the reunification process.

Meyer was concerned for H.M.'s emotional well-being in light of inappropriate statements H.M. had made during therapy, such as Mother is not his mother, his mother lives with Father up in the mountains, Mother hurts children, Mother has tried to poison him, and he does not want to be with Mother.

Meyer was aware of the juvenile court's findings that H.M. had a positive test for benzodiazepine. Meyer had been unable to determine where H.M.'s repeated statements about Mother hurting or poisoning him came from. When Meyer asked H.M. for the basis of his statements that Mother had tried to poison him, H.M. could only say he heard a doctor say that to Father. Meyer found that inappropriate because a doctor is a mandated reporter and he was concerned the doctor and Father had been talking within earshot of H.M. regarding that drug test. Meyer's conversations with the social worker never indicated anyone had investigated a poisoning or attempted poisoning of H.M.

In their last reunification therapy session, H.M. was "vociferous" in saying that when he was throwing up blood, Mother had done nothing about it. After the session was over, Meyer spoke to Father in the hallway to try to figure out how to improve communication between the parents. Father said there was "too much water under the bridge," and when H.M. was throwing up blood, Mother did nothing about it. At that point, H.M. had not had a chance to tell Father what had been discussed in the therapy session.

Meyer remained concerned that H.M. had been telling Mother to take a lie detector test. This suggested H.M. might have heard adult conversations or been subject to adult influence because H.M. never asked what a lie detector test was. Instead, H.M. said to Mother, "Dad took one; you should take one." Meyer believed it was important for H.M. to know, in a therapeutic setting, that Mother had taken and passed a lie detector test. Father and other adults should encourage H.M. by saying, "You know, [H.M.], your mom took that lie detector test and she passed."

Meyer defined parental alienation as a disorder of affection of the attachment bond between parent and child. Disruptions of the attachment bond can affect a person into adulthood in trusting and forming attachments and relationships with other people. Disruptions of the attachment bond can cause depression and anxiety that may affect the child for years to come.

A common cause of parental alienation is a child identifying with a custodial parent and no encouragement to maintain a relationship with the noncustodial parent. This can result in a child not being emotionally warm toward the noncustodial parent. The child might reject the parent or be angry, and the child might make statements serving to reinforce the alienation. In these situations, it is typical for a child to feel disloyal to the custodial parent by loving or having affection for the noncustodial parent. If the custodial parent encourages a relationship between the noncustodial parent and child, the child will feel safe in both situations.

Meyer opined that parental alienation of Mother and H.M. has occurred. The attachment bond between a mother and child is difficult to break, but Meyer has observed disruption in the bond between H.M. and Mother. H.M. has made statements that gave Meyer concern over alienation, and reports suggested the relationship between H.M. and Mother has become worse rather than better. Meyer had not ruled out depression as a possible diagnosis for H.M. because depression and attachment disorders are “co-inhabitants of the same mind.”

Meyer noticed H.M.’s attitude toward Mother has deteriorated particularly after Father obtained custody in 2017. While H.M. was in the Maternal Grandparents’ care, he had a loving, appropriate relationship with Mother. In October 2017, when therapy sessions resumed after a lengthy period, H.M.’s attitude toward Mother was more polite and attentive. But, since H.M. was returned to Father’s care in September 2017, H.M.’s demeanor toward and interactions with Mother had gone from positive to negative. H.M. is withdrawn from and rude to her. According to visitation logs, he has told Mother to shut up, has refused to listen to her, and will not share information about his school or sports activities. H.M. has made age-inappropriate statements, such as Mother was not his mother and stepmother was, Mother hurt children, Mother tried to poison him, Mother was a liar, Mother should take a lie detector test to prove her innocence, and he did not want to be with Mother. H.M. has talked about Mother taking

Father to court. H.M. could not provide specific factual support for accusations. Also, both H.M. and Father had separately said that when H.M. was throwing up blood, Mother did nothing.

In alienation cases, the custodial parent usually does not encourage contact between the child and the noncustodial parent. Meyer saw evidence of that occurring in this case and saw evidence of antipathy by Father toward Mother. The antipathy was likely felt most by H.M. If the custodial parent has an adversarial or hostile relationship with the noncustodial parent, the child also might have a hostile relationship with the noncustodial parent. Meyer was concerned this was happening in this case. It was important that H.M. get rid of his false impression that Mother had poisoned him. Mother had not been encouraged to keep up with H.M.'s schooling, sports, and medical appointments. By failing to bring H.M. to seven or eight therapy appointments Father contributed to the disruption of attachment.

Meyer was concerned H.M. might be subject to adult conversations or influence about the hearings. Discussing a custody case such as this one in front of the child puts the child into conflict and a situation in which the child must ally himself with one parent or the other. In these discussions, the noncustodial parent might not be "painted in the best light."

Children are subject to false memory and are highly subject to suggestion. They need to be able to trust those who take care of them, so they tend to believe the adults who take care of them. A child of H.M.'s age could hear conversations between a parent and stepparent and tend to make certain statements based on hearing a conversation. Undue influence is when a child perceives a threat or problem occurring if the child does not do or think what the parent wants, or if the child is rewarded excessively for doing or thinking what the parent wants.

Meyer has had to evaluate whether one parent is trying to "disaffect the affection" from another parent, i.e., alienation. One parent talking about being taken to

court by the other parent disrupts the attachment between the noncustodial parent and child, and to encourage the child to align with the parent who is the primary caregiver, because the child would believe not aligning with that parent is a betrayal.

In disruption of bond cases, Meyer also looks at whether there has been a pattern of behavior by parents toward each other. Meyer considered domestic violence as a factor in parental alienation because of a substantiated child abuse report in May 2009 regarding an incident in which Father threatened to kill Mother. Power and control are elements of domestic violence and, in hotly contested custody cases, one parent uses the same kind of power and control by keeping the child from the other parent.

Another factor Meyer considered was willingness to coparent. It is important for divorced parents to coparent for the child's emotional well-being because the child has an affectional bond with both parents. Mother has always expressed willingness to try to coparent with Father. Father had not expressed to Meyer a willingness to coparent with Mother, and Meyer did not believe that Father was willing to do so. When parents are not coparenting, one parent is left out of the parenting process, which interferes with the affectional bond with the child. In this case, the acrimonious and high-conflict relationship between Mother and Father has contributed to the attachment disorder. Mother bore some responsibility because she has had a "conflictual relationship" with Father.

Meyer concluded H.M. has suffered psychological damage from disruption of the attachment bond with Mother, and such disruption could have severe consequences for H.M. as he gets older. H.M. was missing out on Mother's contribution to social and family functioning and H.M.'s identification with a family. H.M. has a right to know both of his parents.

Meyer believed Father has the responsibility to repair the relationship between Mother and H.M. because Father is the custodial parent, has more contact and

influence over H.M., and H.M. is aligned with him. H.M. is likely to listen to Father and resent Mother regardless of what she says.

Before June 2018, Meyer had not received all of the SSA reports or a copy of the sustained petition. But even after reviewing the sustained petition and hearing H.M.'s statements about Mother, he did not change his treatment plan.

About two weeks earlier, Meyer spoke in his office with Father for about 45 minutes. They had another conversation between two sessions of the section 388 hearing. Father made it clear he was not interested in coordinating with Mother, Meyer, and H.M. in resolving issues blocking reunification of Mother and H.M. Meyer's motivation in speaking with Father was to encourage a reduction in hostilities between H.M. and Mother so that H.M. could emotionally improve. H.M.'s best interest would be served by Father and Mother resolving their conflicts to a point where H.M. could develop a positive relationship with both of them.

Meyer recommended "an absolutely unfettered visitation schedule" for H.M. and Mother, "if not 50/50 custody" and that Mother's visitations be increased and unmonitored. Unsupervised visits should take place in a friendly environment where H.M. felt secure and had friends nearby. Meyer suggested the Maternal Grandparents' home or Mother's home as possible locations.

H.M. would feel safe at the visits with Mother if both parents encouraged a loving relationship to the other. Meyer was not aware that Father had encouraged H.M. to visit Mother. It was not appropriate for Father to threaten that H.M. could not participate in baseball if he did not visit Mother. Mother and Father should encourage a loving, healthy, and attached relationship to the other, and both should work in cooperation so H.M. knows he is safe with either Father or Mother and knows he is not being disloyal to Father by spending time with Mother.

Although Meyer did not recommend removing H.M. from Father's care, he believed that removing H.M. from Father would disrupt H.M.'s bond with Father "[n]o

more than it has disrupted his bond with Mother,” because “[i]f both parents worked together as coparents and encouraged and affectiona[te] relationship with the noncustodial parent, [H.M.] doesn’t have to lose the affection of either of them.”

Meyer also recommended that H.M. participate “today” in individual therapy, preferably with a Ph.D. level psychologist familiar with treating alienation or attachment disorders. Meyer had been recommending individual therapy for H.M. to the social worker both formally and informally since the very beginning of his involvement in this case. Meyer recommended continued conjoint therapy and that Mother, Father, and stepmother participate in a coparenting program. Meyer opposed the move to Nevada because it would interfere with repairing the attachment bond.

Meyer recommended Evidence Code section 730 evaluations of every “significant” adult in H.M.’s life “so that the court can help make a determination as to what is best for the custody interests of [H.M.]”

At one point in his testimony, Meyer commented this is a “very contentious and complicated case” involving a child “who has cystic fibrosis and an average lifespan of 36 to 39 years.” He stated, “in 25 years there is a probability both parents will stand over the coffin of this child.” Father responded angrily, “This is my son. He has no right to say that.” The court called a recess to allow Father to calm down.

Toward the end of his testimony, Meyer requested to be excused from the case on that ground that, due to Father’s outburst, he no longer felt safe and believed that Father was not supportive of conjoint therapy. The court found that Father had reacted as upset but was not physically aggressive. The court granted the request on the ground Meyer testified H.M. had lost trust in him and there had been no improvement in therapy.

2. Father’s Testimony

Father was not aware that H.M. had called Mother a liar. Father does not talk about Mother in his home, never tells H.M. when he has go to court, and denied talking about this case with H.M. after he was returned to Father’s custody. Father had

not told H.M. that Mother passed a lie detector test because Father was not allowed to discuss the case with H.M.

Father brought H.M. to conjoint therapy regularly and encouraged him to attend conjoint therapy, despite H.M.'s resistance. H.M. missed five or six appointments. On three occasions, Meyer did not show up, on one occasion Father was out of town on business, and on another occasion Father was on vacation with H.M. Another appointment was missed because both Father and Meyer were in court for this case. Father confirmed he did not bring H.M. to conjoint therapy on May 8, July 3, and July 31, 2018 and could not recall whether he brought H.M. to therapy on June 19 and April 24, 2018.

After Meyer did not show up for scheduled appointments, Father asked him to call and confirm sessions. Once, when Meyer did not call to confirm, Father did not attend that session. Meyer called Father and was combative about him not showing up and refused to confirm further appointments. Father brought H.M. to every conjoint therapy session that the social worker confirmed. Father denied telling Meyer that even if he called to confirm an appointment, Father would not show up.

Father denied giving H.M. a cell phone to bring to therapy appointments and disagreed with Meyer's testimony on that point. H.M. did have his own cell phone, and Father had allowed him to bring it to conjoint therapy because Father's attorney had said H.M. could bring a cell phone if it was turned off.

Father brought H.M. to every visit. Father asked to reschedule three visits, but all were made up. When H.M. was first returned to Father's care, H.M. would stay for the entire four-hour visit, although he would not really interact with Mother. Father encouraged H.M. to stay at visits, and had never discouraged H.M. from attending. H.M. did not want to go to visits, but Father told him he had to follow the rules or he might be taken away from Father.

A few months earlier, H.M. was complaining so much about visiting Mother that Father told him he could play baseball only if he stayed for visits. This approach worked until the visitation monitor told H.M. he had the choice on whether to stay. At that point, Mother lost control over making H.M. stay for visits, and now Father gets calls from H.M. five or ten minutes into a visit asking for Father to come pick him up. Father encourages H.M. to stay, but he adamantly refuses.

Father had tried but was unable to enroll H.M. in individual therapy until March 2018 due to limited availability of providers, cost, insurance issues, and being placed on a waitlist. H.M. attended about 10 sessions. His therapist chose to end therapy because H.M. was “okay” and therapy had addressed “everything that needed to be addressed.” Therapy had addressed parenting, emotions, dealing with situations, and H.M.’s needs. When Father testified, H.M. was not attending individual therapy.

H.M. had not been on sick protocol since he was returned to Father’s custody in 2017. In July 2018, H.M. passed his well check at the Loma Linda cystic fibrosis clinic “with flying colors.”

Father wants to move to Nevada for a job opportunity. He is willing to bring H.M. to California once a month for visits with Mother and requested that Mother be required to travel to Nevada for the other biweekly visits.

Father enrolled H.M. in middle school in August 2018. H.M. recently had about four or five absences from school because Father had kept H.M. and his siblings home until the sheriff’s department finished investigating an incident in which Father’s four-year-old son, M.M., was threatened by a classmate. H.M.’s middle school and M.M.’s elementary school are in the same district but not on the same campus. H.M. was never threatened by anyone. H.M.’s absences from school led to a drop in grades. By late September, H.M. was enrolled in an independent study program.

Father was under a family court order not to discuss the case with H.M. Father admitted that in January 2017 he showed H.M. phone records to prove Mother had

lied about Father's telephone calls. The juvenile court took judicial notice of a family court order filed February 6, 2017 finding that Father had violated an order not to videotape custody exchanges.

Father testified that years ago he was twice forced to violate family court orders to protect H.M. when Mother made allegations to child protective services. Mother had sent a child protective services worker to H.M.'s school claiming Father was neglecting his medical protocol. Following this incident, H.M. did not want to visit Mother and did not visit her for about 10 months. On another occasion, when Father took H.M. on vacation, Mother contacted the district attorney and claimed that Father and H.M. had left the state. The district attorney contacted Father and explained what had happened. Nothing came of the incident. Father denied moving H.M. out of Orange County without court authorization.

Father denied hating Mother, telling her that he would make her life miserable, threatening to take H.M. away from her, or perpetrating domestic violence against her. The court noted that the July 27, 2009 restraining order against Father was issued by stipulation of the parties.

3. Ovieda's Testimony

Social worker Ovieda was first assigned to H.M.'s case in September 2017. Ovieda believed H.M. was safe, happy, and well cared for in Father's home. She had no concerns over H.M.'s behavior and had not observed him engage in any self-destructive behavior.

Ovieda had no concern over Father obtaining adequate medical care for H.M. although she could not recall when she last reviewed a pediatrician's note for H.M. At some point, she had reviewed doctor or clinic notes regarding H.M.'s medical condition. She knew H.M.'s current medical condition based only on what Father and stepmother had told her.

Ovieda had never read the complete family court file. She had recommended that Father be allowed to move to Nevada, but, when she made that recommendation, was not aware of any family court orders regarding Father wrongfully moving away with H.M. She also was not aware of the district attorney's actions when Father did not return H.M. for visits with Mother for 10 months. Ovieda was unaware whether Father had a history of violating court orders.

Ovieda prepared the case plan requiring both H.M. and Father to complete individual therapy. It was Ovieda's opinion that Father had complied with the case plan. According to the case plan, H.M. was supposed to have been in individual therapy since September 2017. There had been an issue with H.M.'s medical insurance becoming inactive for some reason, and it took a while for it to become active again, and as a consequence, H.M. did not enroll in individual therapy until December 2017 or January 2018. After completing an intake and two or three sessions, H.M. was successfully discharged from individual therapy. He was not in individual therapy as of September 24, 2018. It would be helpful for H.M. to continue individual therapy even though he was not "display[ing] any behavioral signs."

Father did not enroll in individual therapy until March or April 2018 due to the difficulty in finding a therapist in his area. Father worked "diligently" with Ovieda in finding a therapist. Father completed three to five sessions with a licensed psychologist. Ovieda did not believe Father needed more therapy.

Although H.M. had missed six or seven conjoint therapy sessions, Ovieda did not believe that was a significant number. She had no concerns about Father's willingness to transport, and his compliance in transporting, H.M. to conjoint therapy sessions. She testified that H.M. was allowed to bring a cell phone with him to conjoint therapy sessions but it had to be turned off. However, she also recalled writing a note in the delivered service log reminding Father that H.M. was not to have his cell phone with

him during conjoint therapy sessions and visits with Mother. Ovieda was not aware of Father continuing to send H.M. to conjoint therapy sessions with a cell phone.

As of September 24, 2018, Ovieda had not found a new conjoint therapist for H.M. and Mother to replace Meyer. Ovieda did not believe H.M. needed conjoint therapy with Mother, but acknowledged a therapy setting would be the more appropriate place for H.M. to be told about Mother passing a lie detector test.

After looking at delivered service logs from July and August 2017, Ovieda testified that H.M.'s visits with Mother had worsened since H.M. was placed with Father. In August 2017, H.M. was telling Mother he loved her, and visits were not being terminated early. Mother and H.M. were having almost nightly telephone calls. Between September 2017 and September 2018, H.M.'s visits had gotten worse, and H.M. had not had any telephone calls with Mother in the past six months. Mother never had a visit terminated by a visitation monitor. H.M. said he did not want to visit because he did not like Mother, she took Father to court a lot, and he heard a doctor say Mother had poisoned him.

Ovieda had asked H.M. if Father ever mentioned anything to him about Mother. H.M. said he had not. She did not know if Father told H.M., "[your] mother takes me to court too much."

Father encouraged H.M. to visit Mother and had been cooperative in bringing H.M. to visits. All missed visits had been rescheduled. Ovieda had no indication that Father was the reason H.M. was refusing visits, and H.M. had told both Ovieda and Meyer that Father had not said anything negative about Mother.

Ovieda recommended that H.M.'s visits with Mother continue to be monitored because H.M. did not want to visit Mother at all, and Mother had made some inappropriate statements. Also, Ovieda was concerned that Mother had not resolved the issues bringing H.M. into dependency; however, SSA still did not know how the

benzodiazepine had gotten into H.M., which was the issue prompting the dependency petition.

During the 2017-2018 school year, H.M. had a 4.0 grade point average and was on the honor roll. Ovieda believed he had missed five to six school days and was not considered truant, although she had not checked H.M.'s school records or spoken to the school principal.

4. Mother's Testimony

Since family court proceedings started in 2009, Father has not cooperated with custody and visitation orders. In 2009, Father threatened to make Mother's life miserable and take H.M. from her if she left him. Father had controlled and monitored H.M. for years through his cell phone.

For about a 10-month period in 2015-2016, Father withheld H.M. from visiting Mother by having H.M. refuse to go with her and by blocking her phone calls. She got her custodial time with H.M. back only when the district attorney obtained a recovery warrant. Once H.M. returned to Mother's home, things were good and he became loving and affectionate to her. In court on the day H.M. was returned, H.M. screamed she was not his mother and put on a huge scene, but once he got away from court and the eyes of Father and stepmother later that day, was a happy, loving kid.

Mother and H.M. had a good relationship in the past. They would boogie board, surf, and skate. H.M.'s friends would spend the night at Mother's house. Photographs of Mother and H.M. were received into evidence. One set of photos was taken in August 2016, when H.M. was returned to Mother after the 10-month absence. The second set was taken in February 2017 (the month before the dependency proceeding began) when Mother took H.M. camping with friends and he rode a new dirt bike he got for Christmas. The third set was taken in September 2017, just days before H.M. was returned to Father's custody. Mother did not force H.M. to smile and was not aware of Maternal Grandparents threatening H.M. if he did not act in a certain way.

From July 1, 2017 through August 31, 2017, H.M. was placed with Maternal Grandparents. H.M. was happy living at their house and had a good relationship with them. He used to hug and kiss the maternal grandmother and was extremely close with maternal grandfather.

While H.M. was living with Maternal Grandparents, Mother would visit him three times a week and they would speak on the phone every day. The conversations were good: H.M. told Mother about his day and told her he loved her. At first, Mother's relationship with H.M. was somewhat rough because of everything that had happened and been said to H.M., but after a time, their relationship improved. In their visits and phone calls from July through August 2017, H.M. was loving and affectionate, and their relationship was doing well. They laughed and had fun together. H.M. did not refuse to visit Mother during those two months and did not accuse her of poisoning him. He never seemed to be going through the motions or displaying forced affection while living with Maternal Grandparents.

After H.M. was returned to Father's custody, H.M.'s attitude changed drastically. H.M. was rude and did not want to be around Mother or stay at visits. He started making age-inappropriate statements, such as Mother drugged him and she was not his mother. H.M.'s accusation that hugging was an assault came from stepmother. Mother did nothing to H.M. to warrant his behavior, which worsened after returning to Father's custody. Mother now must drive over two hours to see H.M. for just a couple of minutes and say she loves him so she does not get erased out of his life. It is important to Mother, and extremely important for H.M. to hear his mother say she loves him.

Father has had a history of alienating H.M. from Mother since before the dependency proceedings. H.M. first started lying about not wanting to live with Mother when stepmother came into the picture, around 2012. H.M. in the past had yelled at Mother about things Father had said, e.g., she called the police or took Father to court. Father and stepmother project onto H.M. their belief that Mother is a danger. For

example, every time Father brought H.M. to court during the ongoing trial, Father placed his arm around H.M. (“bulldog” style) to prevent H.M. from being able to see or talk to Mother. This happened in the court cafeteria on October 12, 2018. In 2016 when H.M. was returned to her after wrongfully being with Father for 10 months, he had thrown a fake screaming fit in court because Father had had instructed him to do so. H.M. was fine and loving again to her as soon as he came home with her.

H.M. said he did not want to see or live with Mother only because he had been unduly influenced by Father and stepmother. In the past, H.M. had said that Father and stepmother had forced him to be mean to Mother and say he did not want live with her.

When Mother and H.M. first began seeing Meyer for conjoint therapy in late 2016, H.M. acted differently depending on which parent brought him to the session. If Father brought H.M. to the session, he would sit on the floor and yell things about Mother not being his family. When H.M. was brought to the session on Mother’s parenting time, he would behave normally, was loving, and would sit next to Mother.

Father has made Mother’s life a “living hell.” Father has controlled and monitored H.M. for years through his cell phone. Father has not given Mother updates on H.M.’s medical condition or sports schedules. Because H.M. has cystic fibrosis and his lifespan might be only 37 years, Mother feels she is missing out on his entire life.

Participation in individual therapy has helped Mother to deal with high conflict situations and “everything that’s going on.” Mother also completed a parenting class which has helped her not to react to the things H.M. does and to just let him know she loves him. Mother’s regular doctor appointments and weekly individual therapy sessions have helped prevent another psychiatric hospital hold.

Mother believes that today, as in the past, no services can repair her relationship with H.M. so long as H.M. is living with Father and stepmother and subject to their influence. Mother could repair the relationship with H.M. if he were returned to

the care of Maternal Grandparents. Mother is worried about H.M.'s psychological and emotional well-being, especially about the long-term effects if H.M. continues to live with Father. She believes removal from Father's care would be in H.M.'s best interest.

Mother was concerned that Father was not following H.M.'s case plan requirements and violating dependency court orders. Father failed to bring H.M. to eight conjoint therapy sessions between November 2017 and August 2018. Father violated court orders by sending H.M.'s cell phone with him to Meyer's office, allowing H.M. to have a knife on him at a visit, and calling H.M. during visits. Mother witnessed H.M. being told by monitors and the social worker that he was not to have his cell phone during visits, yet Father sends H.M. to visits with his cell phone.

Father violated or failed to cooperate with court orders by having stepmother attend H.M.'s medical appointments so that Mother, who was not permitted to be near stepmother, could not attend them. Father does not provide Mother with information about H.M.'s sports schedule or school awards events. Mother never heard the visitation monitor tell H.M. he did not have to visit Mother because he is old enough. There were visits when Father would be sitting in the parking lot waiting for H.M.

Mother is concerned about H.M.'s education because H.M. is no longer enrolled in full-time school, where he had friends. Because Father had taken H.M. out of school, he is at home and isolated.

5. Testimony of H.M.'s Individual Therapist

Mary Taboada was H.M.'s individual therapist. She was an associate marriage and family therapist and not yet licensed. Father referred H.M. to her for therapy in 2017. Taboada saw H.M. for an intake session and two therapy sessions. During the two-hour intake session, Taboada spoke to both Father and H.M.

Taboada received some background on this case by speaking to the social worker, but she was not provided with any documents from the dependency case file. Her understanding was that H.M. was referred to therapy to deal with the transition

between his relationships with Mother and Father. Taboada has never worked on juvenile dependency cases before and has had no child clients. Nobody told Taboada that H.M. was participating in conjoint reunification therapy with Mother, and Taboada did not know that H.M. had cystic fibrosis.

Taboada diagnosed H.M. with general anxiety disorder because he was worried about the changes in his life. His treatment goals included working on his general anxiety disorder. H.M. told Taboada he really liked staying with Father and did not want to be with or have a relationship with Mother. Although Taboada never got the sense those thoughts had been planted in H.M.'s mind, she never checked to see if the poisoning assertion was true.

Taboada and H.M. did not make progress toward his treatment goals because he only participated in the intake appointment and one session in mid-January 2018 before there was a break in therapy of about three months due to H.M.'s insurance being declined. When Taboada saw H.M. again in April 2018, Father told her that H.M. did not want any more services. She closed his case for that reason.

Taboada was asked whether she believed H.M. needed more therapy and what she had recommended to Ovieda. Taboada testified that after the second session with H.M. she believed he had no behavioral issues and did not need more therapy. After speaking with the social worker and learning more specifics about the case, Taboada felt it was important for H.M. to continue therapy services in the long term. She did not tell Father that H.M. needed more therapy.

6. Weiss's Testimony

Weiss saw Father for a total of seven therapy sessions from March 26 through June 6, 2018. She requested the juvenile dependency file from the social worker and received only two documents—a case plan and SSA's jurisdiction report. Weiss asked Father to bring court papers, but he did not have any papers for her and gave her an

oral history of the case instead. Weiss has never handled a juvenile dependency case or high-conflict family law cases regarding custody and visitation.

Weiss initially set no therapy goals for Father because she was waiting for the social worker to explain what she was supposed to be doing. After reading the materials supplied by SSA, Weiss addressed issues needing clarification from Father. Weiss did not work on impulse control, domestic violence, or anger management, the issues described in the case plan, because Father did not seem to have them. Father told Weiss he had been “exonerated” of domestic violence after a trial.

Father seemed to be calm and accepting of the situation with Mother. He denied giving benzodiazepine to H.M. and never acknowledged removing H.M. from Children’s Hospital of Orange County and taking him to Loma Linda Hospital. Father impliedly blamed Mother for H.M. coming into the dependency system and never admitted to any fault in the contentious family law proceedings.

Father told Weiss he was staying out of the relationship between H.M. and Mother. Father encouraged H.M. to attend and stay at visits with Mother. They explored the issue of Father working better with Mother, but that did not look feasible. Father felt that interactions with Mother were unproductive and just made things more complicated and worse. Father was unwilling to talk with Mother.

In light of the no-contact order, it seemed that Father was doing the best he could to coparent by bringing H.M. to visits with Mother and making sure that Mother had access to all of H.M.’s information. Weiss was baffled by the recommendation to work with Father on coparenting when Mother was not to be involved.

Weiss diagnosed Father with unspecified adjustment disorder, which is situational. She does not believe Father needs any more treatment. Her opinions were based on Father’s self-reporting and the jurisdiction report she received from the social worker. She did not verify any of Father’s statements to her.

7. H.M.'s Testimony

All parties stipulated to taking H.M.'s testimony in chambers outside the presence of Mother and Father. H.M. is 12 years old and in the seventh grade. He has been doing independent study for about a week. Father and stepmother told H.M. that they had pulled H.M. and his brother out of school because the brother had received a shooting threat at school and the school did nothing about it. H.M. liked his school and had a lot of friends. His grades were generally good, but his grade in science dropped to an "F" because he was missing school.

H.M. has been living with Father for about a year. Before that, he lived with Maternal Grandparents and lived with Father before living with them. H.M. wants to remain living with Father. He feels safe with Father and described him as his "best friend." H.M. wants to move to Nevada with Father. Father promised H.M. that if they moved to Nevada, H.M. could ice skate and play ice hockey there.

H.M. has visits with Mother every other Sunday but does not stay for very long. H.M. said when he was placed with Father again, he went to visits with Mother because he did not want to "get taken away again." Although no one told him he would be taken away from Father, H.M. guessed that could happen because it had happened before. H.M. did not remember telling Mother he loved her at a visit in February 2018. He had been calling stepmother "mom" for about a year and a half. Father never corrected him.

H.M. did not want to visit Mother, but Father encouraged him to visit her, saying he should go and at least say "hi." Father told H.M. he could not play baseball unless he visited Mother. At some point, the visitation monitor told H.M. he did not have to stay for visits and could call Father to come get him if he wanted. After that, H.M. did not stay at visits. When he called Father to pick him up from visits early, Father asked him why he did not want to stay, and sometimes tried to convince him to stay.

H.M. admitted bringing his cell phone to visits and conjoint therapy sessions with Mother but said neither Father nor stepmother were listening to his visits with Mother. H.M. denied bringing a pocket knife to a visit with Mother even after he was shown pictures of himself with the knife in his pocket. He said it was a metal clip wallet.

H.M. does not want to visit or live with Mother because once, after he had been at her home for a week or so, he threw up blood. He does not trust Mother or feel safe with her. He believes Mother did something to make him sick and if he was with her the same thing would happen again. When he was living with Mother, he would get sick more often than when with Father. He overheard a doctor at the emergency room in the Lake Arrowhead hospital say to Father there was something in H.M.'s body that should not be there.

H.M. testified his own attorney had told him that Mother took a lie detector test and it came back finding she had not done anything. He also testified he first learned of Mother's lie detector test at one of Meyer's visits when he overheard Mother and Meyer talking about it. However, H.M. later testified that nobody explained to him that Mother had taken a lie detector test. Despite the results of Mother's lie detector test, H.M. believed Mother had made him sick because after staying at her house for a week, she "made" him throw up blood. H.M. believed Mother put drugs in him sometimes. H.M. knew Father had taken a lie detector test because he heard the social worker talking to him about it.

No one had ever told him Mother had caused him to throw up blood. He assumed Mother caused him to throw up blood, although he did not know what she did to cause that to happen. No one had ever told H.M. that throwing up blood might be a consequence of having cystic fibrosis.

H.M. did not know if Father took any medication or pills. H.M. had never seen Father take pills and did not know if Father was prescribed the same drug found in

H.M.'s system. H.M. did not know Father was taking the same medication that was found in H.M.'s system and did not know that Father had tested positive for that drug.

H.M. remembered that Mother had a lot of pills in her cabinet when he visited her. He seemed surprised when he learned while testifying that Mother tested clean for benzodiazepines in March 2017. Nobody had ever told him that. H.M. wanted to know if Mother took that drug. H.M. believed there could be a link between Mother taking the medication that was found in his system, but if Father were prescribed any sort of medication, H.M. did not think it was related to him being sick because he was with Mother for "multiple days" and threw up blood in her care. It was important for H.M. to know whether Mother took benzodiazepine when he was with her.

H.M. also did not want to see Mother because she was always taking Father to court and trying to take H.M. away from Father and his family. Nobody told H.M. this; instead, he knew so because Father would leave "super early" in the morning and come home late and social workers kept coming to talk to Father. H.M. believed Mother was bringing Father to court, and not the other way around, because he lives with Father, and "we're doing good. And I don't ever really see my mom, so I assume it is her."

H.M. did not think counseling with Mother and Meyer did anything and called it "dumb" and "a waste of time." He had brought his cell phone to visits and sessions with Meyer, until the social worker said not to, but never had it on. H.M. was unwilling to work with a different therapist and Mother because he did not trust Mother.

Father and stepmother never told H.M. that Mother was not his mother. H.M. did not remember taking \$20 from Mother's purse at a visit and telling her "stealing is healing." He also did not remember asking her how much money he needed to pay her to leave.

H.M. had fun with Mother when he was little. He did not remember ever having had good visits or fun with her since then. Visits during the period of June through September 2017, when he was placed with Maternal Grandparents were not

good. He looked at photographs of himself in a pool, bicycling, and smiling at Mother and remembered he did have good times. But he asked what the photographs had to do with this case now because they were “super old.”

When shown photos of himself in September 2017, H.M. said he did not have good times with Mother then. H.M. did not remember telling a social worker in June 2017 that he was having good visits with Mother. In the photographs, he was only fake smiling and showing affection to Mother because Maternal Grandparents told him to. Once before a visit with Mother, maternal grandfather told H.M. he had to tell Mother he loved her, and when H.M. talked to Mother on the telephone, Maternal Grandparents would tell him to tell Mother he loved her. Father did not force H.M. to do those things but told him “you should.”

When asked if he likes his Maternal Grandparents, H.M. said he likes them “better than my mom.” When H.M. lived with Maternal Grandparents, they showed him lots of love and affection and he had good times with them but H.M. felt sad because he missed and wanted to see Father and his siblings. H.M. never missed any visits with Father when he was living with Maternal Grandparents. H.M. had not seen Maternal Grandparents since he moved back to Father’s house. H.M. has not asked to see Maternal Grandparents and does not want to see them because when he left their house, they told him if he went to live with Father, he would not be able to play sports, and they did not want him to live with Father. Maternal Grandparents did not speak well of Father. H.M. could not remember what bad things they had said.

H.M. had called Maternal Grandparents once to ask how they were doing. They wanted to see him, but H.M. told them he could not see them that weekend, and they did not call him after that. Although H.M. did not want to see or speak to Maternal Grandparents anymore, he would rather live with them than with Mother.

III. The Juvenile Court's Rulings on Mother's Section 388 Petitions

On November 9, 2018, the juvenile court made rulings and orders. The juvenile court found that Mother had not shown a change of circumstances justifying a change in custody. The results of Mother's polygraph test were not enough to find that Father provided the benzodiazepine to H.M. and therefore were not enough to find a change of circumstances.

The court did find, however, that H.M. was experiencing "ongoing alienation" from Mother. Evidence of alienation included:

1. Father's hatred of Mother and H.M.'s alignment with Father. The court noted that Father's hatred of Mother is "palpable by his facial expressions and body language." The court stated it was "evident" that H.M. was "aligned" with Father, and H.M.'s testimony showed that H.M. had been "influenced by that alignment." Father's hatred of Mother and H.M.'s alignment with Father were the court's biggest concerns. The court stated: "[T]he problem is, once the child aligns with the parent and that parent is noticeably—whether it's whenever the mother's name is mentioned there's a cringe; there's body language. Even if there's nothing spoken, that reinforces to that child who's now aligned with that parent that it influences that child's behavior whether the parents are even really aware of that."

2. Negative statements made by H.M. about Mother. The court found "[t]here is some evidence that Father or others are making statements to [H.M.] or in [his] presence or they're allowing others to do so." In particular, the court was concerned that H.M. did not start using the word poisoning until after he had been placed in Father's custody in September 2017. "[I]t's not clear exactly where [H.M.] started identifying the ingestion of benzo[diazepine] with actual poisoning him, but the court does at least note that there seems to be no indication to the court of [H.M.] using that term until after he was returned to Father." The court also observed that H.M. referred to Mother's attempt

to hug him as assault but testified he does not know what assault means. H.M. told Meyer in a therapy session that Mother had done nothing when H.M. was coughing up blood; immediately after that session, Father told Meyer the very same thing. The court stated this “certainly gives an appearance that things are being discussed.”

3. Bringing a cell phone to conjoint therapy. The court found: “[S]ome evidence of alienation was allowing [H.M.] to bring a cell phone to visits and to conjoint therapy. Father is the one who [H.M.] has been in custody with and that has been a continued problem.” Permitting H.M. to bring a cell phone to conjoint therapy and visits with Mother meant H.M. would never be separate from Father and would prevent H.M. from focusing on therapy and contacts with Mother.

4. Father’s violation of court orders. The court found that “the family law court had noted that Father had violated court orders regarding no cell phones and this is a continuing issue.”

5. Father giving conjoint therapy low priority. Although the court declined to find that Father was uncooperative in supporting conjoint therapy, the court did find that Father did not give conjoint therapy priority in his or H.M.’s schedule in that “if other things come up, that becomes more important than going to conjoint therapy.”

Those findings notwithstanding, the court found that Mother had not shown a change of circumstances warranting a change in custody. The court found that “[a]lienation has been going on for a long time in this case” and both Mother and Father were to blame. The court found reasonable cause for H.M.’s alienation from Mother was H.M.’s belief that Mother had poisoned him. H.M.’s belief, the court found, was honestly and reasonably held, even if it were inaccurate. The juvenile court’s ruling in September 2017 returning H.M. to Father’s custody and granting Mother only monitored visits supported and confirmed H.M.’s beliefs that Mother had drugged him and led H.M. to believe he was not safe with Mother. The court explained that H.M., who is an

intelligent child, would consider the court's ruling and conclude it was a confirmation that Mother had drugged him.

Importantly, perhaps key to understanding the court's decision is the comment that "[H.M.] has noted continually he feels healthier and safer with Father and his siblings."

Finally, the court found that Mother had not shown a change of circumstances because the court could make orders to address the alienation issues. The court then made these orders:

1. Conjoint therapy between Mother and H.M. is to resume "immediately."
2. H.M. is to immediately resume individual therapy with a therapist experienced in handling high conflict cases. The court stated "[i]t is not sufficient to just have any therapist."
3. H.M. is not to have a cell phone or smartwatch "of any kind" during therapy or visits with Mother. "There's no reason at all for [H.M.] to have a cell phone. If there's an emergency, there's other people [who] can alert emergency."
4. H.M. is to have regular visitation or telephone contact with Maternal Grandparents.
5. H.M. is to resume monitored visitation with Mother "with the goal of transitioning to regular unmonitored visits." The court ordered monitored visitation for H.M.'s peace of mind because H.M. did not feel safe with Mother. The court did not find that H.M. would be unsafe with Mother without a monitor.
6. H.M. is not allowed to leave visitation with Mother early. H.M. is not required to "engage or speak to Mother, but may not leave the visit early."
7. Father is to resume individual therapy with a therapist experienced in handling high conflict cases.

SIX-MONTH REVIEW HEARING

The juvenile court conducted a contested six-month review hearing on November 26, 2018. At the outset, the court confirmed that evidence presented in connection with Mother's section 388 petitions would be considered at the six-month review hearing.

The court received into evidence an SSA addendum report dated November 26, 2018. According to this report, the social worker had left one message for a Ph.D. level therapist for H.M., but learned on November 19, 2018, that the therapist had no openings for new clients. The social worker contacted Weiss for help in finding an individual therapist for Father but Weiss had no local referrals.

The November 26, 2018 addendum report states the social worker had left a message for the "paternal grandfather" (probably maternal grandfather) on November 16, 2018, "to develop a time frame" for phone calls. H.M. had a visit with Mother on October 21, 2018, and another on November 4, but he did not stay at either visit. At both visits, he brought his cell phone and called Father to pick him up within minutes of arriving. Mother told the visitation monitor, "you guys don't do anything to get him to stay." The monitor replied, "It is his choice."

SSA prepared the November 26 report after the evidence had been presented on Mother's section 388 petitions, after the court found H.M. had suffered alienation from Mother, and after the court found that Father's hatred toward Mother was palpable and H.M. was aligned with Father. Surprisingly, SSA continued to recommend termination of dependency proceedings with exit orders. At the six-month review hearing, minor's counsel stated she had not anticipated that SSA would recommend closing the case.

Father testified. He formally requested that the court permit H.M. to move with him and his family to Henderson, Nevada. As to visitation, Father testified, "We can rotate or maybe meet halfway and get the visiting in, the counseling in and whatever

the court needs us to do.” SSA supported Father’s move away request and again recommended dependency proceedings terminate with exit orders.

The juvenile court made additional rulings and orders. The court found that continued jurisdiction was necessary to protect H.M. from substantial risk of suffering serious emotional damage. The court stated that Mother’s section 388 petitions were “an extremely close call” and based its decision on the burden of proof. The court denied the section 388 petition with this caution: “[I]f . . . [H.M.] does not get therapy that [he] needs, that Father does not get the therapy that Father needs and that the conjoint therapy does not resume, that [H.M.] will indeed suffer detriment. And the court has evidence from that based on Dr. Meyer indicating about the effect of—the long-term effect on the alienation of affection on the one party.”

The juvenile court ordered:

1. H.M. is to remain placed with Father.
2. The visitation plan in the SSA report dated November 26, 2018 is approved and incorporated into the court’s order.
3. Evidence Code section 730 evaluations of H.M., Mother, and Father must be conducted. The evaluations are to include interviews with H.M., Mother, Father, stepmother, and maternal grandfather.
4. Gerardo Canul, Ph.D., is appointed to complete the Evidence Code section 730 evaluations.
5. “The [section] 730 evaluation report should focus on how to best serve the family going forward to include: therapy for [H.M.], for conjoint counseling[,] counseling for [H.M.] and [M]other, therapy for [Father], and also to proceed with respect to how to improve, if there is a possible way, co-parenting issues between the parents and what steps should be taken to address the co-parenting issues.”

On December 10, 2018, the juvenile court issued an order denying Father’s move away request. The court’s reasons for denying the request are important enough to

justify reprinting them in full: “1. The prior judicial officer who presided over the disposition hearing noted that [H.M.] needed to find a way to re-establish a connection with [M]other. Dr. Meyer testified as to possible long term negative effects on the child if the mother/child bond was broken. [¶] 2. In ruling on the issue of alienation, the court found some alienation had occurred by [F]ather after [H.M.] was returned to his sole custody in September 2017, and alienation had occurred by both parents historically prior to the opening of this dependency case. [¶] 3. The court found [H.M.] has not had any meaningful individual therapy to deal with the issues that brought him into dependency, or the destruction of the parental bond with [M]other and [H.M.]’s extreme alignment with [F]ather. [¶] 4. The court found [F]ather has not had any meaningful therapy to address his palpable animosity toward [M]other, his conflict with [M]other, and the effect same has on the child and the child’s relationship with [M]other. [¶] 5. The court is concerned regarding the lack of ongoing conjoint therapy between [M]other and [H.M.] since Dr. Meyer was relieved in August. [¶] 6. Since being told by the monitor that he had the option of not visiting [M]other, [H.M.] has been unwilling to visit [M]other even with a monitor present. [¶] 7. The court is concerned regarding [F]ather’s prior history of violating court orders (per Judge Miller), and [F]ather’s statement that he is willing to disobey court orders if HE believes it is in the best interest of [H.M.] [¶] 8. [F]ather has indicated he is unwilling to engage in any co-parent counseling with [M]other. [¶] 9. The court is concerned with [F]ather’s lack of encouragement with conjoint therapy and [M]other’s visitation with [H.M.] and [F]ather’s unwillingness to see any value in [H.M.]’s relationship with [M]other. [¶] 10. The court has ordered a [section] 730 evaluation to determine the best course of treatment for the parties. [¶] 11. The move to Nevada would increase the travel time necessary for [M]other’s visitation and [M]other and [H.M.]’s conjoint counselling and increases the likelihood re lack of compliance. [¶] 12. Court finds it would be detrimental to [H.M.] at this time to allow the move away

until the above issues have been meaningfully addressed and not unless safeguards are in place to ensure [F]ather's compliance with therapy and visitation."

The court again found that Mother did not pose a threat to H.M. but ordered Mother's visits to be monitored "in the best interest of [H.M.]'s peace of mind, sense of safety and emotional well-being." The court ordered SSA to reevaluate Maternal Grandparents as possible visitation supervisors and ordered that Mother's visitation with H.M. be "liberalized with the goal towards overnight [visits] once conjoint therapy and [H.M.]'s individual therapy resumes."

DISCUSSION

I. Background Law and Standard of Review

Section 388, subdivision (a)(1) provides in relevant part: "Any parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court." To prevail on a section 388 petition, the moving party must establish by a preponderance of the evidence that (1) new evidence or changed circumstances exist, and (2) the proposed change would promote the best interests of the child. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; *In re Ernesto R.* (2014) 230 Cal.App.4th 219, 223.) The change in circumstances proven must relate to the purpose of the prior order such that modification of the order is "appropriate." (*In re A.R.* (2015) 235 Cal.App.4th 1102, 1119.)

We review an order on a section 388 petition under the abuse of discretion standard. (*In re Stephanie M., supra*, 7 Cal.4th at p. 318.) The appropriate test for abuse of discretion in considering the denial of a section 388 petition has been held to be "whether the trial court exceeded the bounds of reason." (*Id.* at pp. 318-319.) "When

two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.”” (*Id.* at p. 319.)

Under the abuse of discretion standard, we review factual findings for substantial evidence. (*In re A.R., supra*, 235 Cal.App.4th at p. 1117.) “[T]he issue is whether there is evidence, contradicted or uncontradicted, to support the finding. In making that determination, the reviewing court reviews the record in the light most favorable to the challenged order, resolving conflicts in the evidence in favor of that order, and giving the evidence reasonable inferences. Weighing evidence, assessing credibility, and resolving conflicts in evidence and in the inferences to be drawn from evidence are the domain of the trial court, not the reviewing court. Evidence from a single witness, even a party, can be sufficient to support the trial court’s findings.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450-451.)

II. Mother Proved Changed Circumstances but the Juvenile Court Did Not Err by Denying Her Section 388 Petitions.

The juvenile court found that Mother had not proven changed circumstances because the results of Mother’s polygraph test were not dispositive and H.M. had been undergoing alienation from Mother since before being placed with Father in September 2017. These findings cannot, however, be reconciled with the evidence, the history of the case, and the juvenile court’s other findings.

In applying the standard of review, we start by identifying the reason why H.M. was brought into the dependency system and placed with Father, then we turn to the changed circumstances which Mother contends require a change in custody. H.M. was placed in protective custody in March 17, 2017 because he tested positive for benzodiazepine. After a lengthy dispositional hearing, the juvenile court vested custody with Father based on a finding that vesting custody with Mother would be detrimental to H.M. Although the court did not expressly find that Mother gave the benzodiazepine to

H.M., the fingers were pointed at her. The court rejected Mother's theory that Father had given H.M. benzodiazepine (even though Father was taking Xanax) and commented that H.M. had been with Mother for nearly a week when he tested positive for that drug.

Mother's polygraph test results were significant because they challenged, if not eliminated, the entire premise for vesting custody with Father. Mother passed the polygraph test with flying colors. The polygraph examiner not only concluded that Mother passed the test and answered the questions truthfully, he concluded her numerical evaluation score of +27 was 21 points higher than the minimum number required for her questions to be considered truthful. In addition, we note, there was no evidence Mother had possession of benzodiazepine, she tested negative for the drug, and H.M. was taken to the hospital because he had been coughing up blood in his mucus which, according to H.M.'s physician, was a consequence of cystic fibrosis and indicated an infection treatable with antibiotics.² (*H.M. I, supra*, at p. 12.)

It is true, as the juvenile court found, Mother's polygraph test results do not prove that Father gave H.M. the benzodiazepine. They do, however, place Mother in at least an equal position to Father in claiming innocence. Given the results of Mother's polygraph test and other evidence tending to exonerate Mother, it cannot be said that H.M. would be at any greater risk of ingesting benzodiazepine if in Mother's custody than he is in Father's custody. Thus, the results of Mother's polygraph test were "game changers" that constitute changed circumstances.

H.M.'s alienation from Mother had been ongoing for years, as the juvenile court found, but the degree and intensity of alienation had worsened dramatically since H.M. was placed in Father's custody in September 2017. The evidence is uncontradicted on that point. Meyer testified that H.M. has attachment disorder or parental alienation

² In June 2017, Dr. Joshi, H.M.'s pulmonologist at Loma Linda, told the social worker he did not believe that benzodiazepine would have caused H.M. to cough up blood and "if [H.M.] coughs up blood this could be caused by the lung disease worsening."

from Mother. Meyer and Mother testified that H.M.'s alienation had become dramatically worse since H.M. was returned to Father's care. The SSA reports describe visits between H.M. and Mother becoming much worse. Ovieda acknowledged that H.M.'s visits with Mother had gotten worse after September 2017. It is true that before H.M. was returned to Father's custody H.M.'s relationship with Mother had indeed been complicated and alternated between loving and hostile. The changed circumstances proven by Mother were that after H.M. was returned to Father's custody, their relationship deteriorated rapidly and dramatically to the point that H.M. would insist on leaving visits after only a few minutes, showed no affection toward Mother, rejected any affection from her, was openly hateful to her, and insisted she was not his mother. It was only after H.M. was returned to Father's custody that H.M. began to accuse Mother of poisoning him and called her a liar.

SSA argues the visitation monitor was the cause of H.M. insisting on leaving visits early, but that just begs the question: Once H.M. was told he could leave visits early if he wanted to, why did H.M. insist on leaving? The answer is that something happened after September 2017 that caused H.M. to so hate Mother that he would decide to leave visits after only a few minutes.

Was Father the cause of the alienation? The juvenile court blamed both Mother and Father. While that might have been true in the period leading to H.M.'s placement with Father in September 2017, the issue is what caused H.M.'s dramatic change in attitude toward Mother after that date. The juvenile court's own findings implicate Father. The court expressly found: (1) Father's hatred of Mother was "palpable;" (2) H.M. is aligned with Father; (3) Father made statements in H.M.'s presence or was allowing others to make statements in H.M.'s presence leading to alienation from Mother; (4) Father had allowed H.M. to bring a cell phone to visits with Mother and to conjoint therapy session; (5) Father gave low priority to H.M. attending

conjoint therapy; and (6) H.M. had started saying things, such as Mother “poisoned” him, that echoed statements made by Father.

The juvenile court found that H.M. on his own could have reached the conclusion that Mother had given him benzodiazepine based on the dispositional order returning him to Father’s custody. But in denying Father’s move-away request, the court found Father was responsible for some alienation after September 2017, was unwilling to engage in any coparenting with Mother, did not encourage H.M. to participate in conjoint therapy, and most disturbingly, was unwilling to see any value in H.M. having a relationship with Mother. The record shows that apart from minor’s counsel nobody with appropriate authority and training (such as a physician or a psychologist) has ever explained to H.M. the meaning and significance of Mother’s polygraph test results and the causes of his coughing up blood.

In light of those findings and the evidence, any finding that Mother did not prove changed circumstances simply cannot be upheld. Mother proved she had passed a polygraph test, which undermined the very basis for vesting custody with Father, after September 2017 H.M.’s alienation from Mother worsened dramatically, and Father was a major contributor to, if not the primary cause of, this alienation. No other reasonable conclusion is possible from this record.

But we must also consider whether the custody change proposed by Mother would promote H.M.’s best interests. In doing so, we must recognize that H.M. is happy and secure in Father’s custody. H.M. wants to remain living with Father. He feels safe with Father and described him as his “best friend.” Nobody except Mother wants to change this custody arrangement.

The juvenile court understood the risk of harm, both short-term and long-term, posed by H.M.’s alienation from Mother. The juvenile court also understood the risk of harm posed by removing H.M. from Father’s custody. The juvenile court observed H.M. become emotional and having to take breaks from testifying when it was

suggested he might be removed from Father's custody. The juvenile court commented that "[H.M.] has noted continually he feels healthier and safer with Father and his siblings." H.M.'s beliefs, rightly or wrongly held, that Mother gave him the benzodiazepine and caused him to cough up blood, means that placing H.M. in Mother's or Maternal Grandparents' custody would be particularly traumatic for him.

In ruling on Mother's section 388 petitions, the juvenile court took into account both the risk of harm from parental alienation and the risk of harm from removing H.M. from Father's custody. Thus, while the court did not change custody, it issued a series of orders intended to foster better relations between H.M. and Mother and start the healing process. The court ordered that conjoint therapy and individual therapy for H.M. is to resume immediately, H.M. is not to have a cell phone or smartwatch during visits with Mother or conjoint therapy, H.M. is to have regular visits with Maternal Grandparents, H.M. is to visit with Mother and is not allowed to leave visits early. At the six-month hearing, the court ordered Evidence Code section 730 evaluations of H.M., Mother, and Father. The court ordered liberalized visits with Mother with the goal of overnight visits. The court's order that visits with Mother must be monitored was made not because H.M. would be unsafe with Mother—the court found that Mother did not pose a threat to H.M.—but for H.M.'s peace of mind.

The juvenile court acted within its discretion by resolving Mother's section 388 petitions in this way. The court's ruling reflects a justified belief that reunification with Mother can and should be achieved without the risk of harm to H.M. that might arise from removing him from Father's custody.

Mother argues the orders issued by the juvenile court are no different from orders issued in the past that Father has ignored or disobeyed. Mother has filed a request that we take judicial notice of her opposition to the juvenile court's sua sponte motion to dismiss the order to show cause for contempt citations against Father and Ovieda. SSA has filed opposition to the request. We deny the request because it concerns

postjudgment evidence (*In re Zeth S.* (2003) 31 Cal.4th 396, 405-408) and taking judicial notice of Mother's opposition would not permit us to take judicial notice of the truth of facts asserted in the opposition (*People v. Franklin* (2016) 63 Cal.4th 261, 280).

We nevertheless share Mother's concern that going forward Father will not comply with the court's orders and not do his part to allow H.M. to repair his relationship with Mother. What we have seen in the record is not encouraging in this respect. Father has not always been cooperative in complying with court orders and has done so with apparent impunity. However, we do not find an abuse of discretion by the juvenile court in making the orders because we trust that from here on out failure to comply with the orders will have immediate and serious consequences, which might include contempt citations. Failure to comply is not an option for Father or SSA.

We hope that the relationship between H.M. and Mother can be mended because that would be in H.M.'s best interest. As Meyer testified, parental alienation can cause a child lifelong suffering. It might be that H.M.'s alienation from Mother can be healed while H.M. remains in Father's custody. Mother argues her relationship with H.M. can never be restored while he is in Father's custody. The juvenile court, properly exercising its discretion, believed otherwise, and declined to change the custody order. If, however, substantial progress is not made within a reasonable time in improving the relationship between H.M. and Mother, then the juvenile court shall have no alternative but to consider changing custody.

We are concerned about SSA's role in repairing the relationship between H.M. and Mother. Bluntly put, SSA supports Father wholeheartedly and wants to end this case. At one point, SSA recommended transferring this case to San Bernardino County notwithstanding the obvious burden that transfer would place on Mother. Despite the evidence of parental alienation, SSA at one point recommended terminating jurisdiction with exit orders. SSA supported Father's request to move to Nevada, a request which should have been rejected outright. SSA has described Father's

inconsistent compliance with the case plan as “substantial” while describing Mother’s compliance as “adequate” even though Mother has done every single thing asked of her. At the hearing, Ovieda testified she was concerned that *Mother* had not resolved the issues bringing H.M. into dependency even though Mother had taken and passed a polygraph test and SSA acknowledged it did not know how the benzodiazepine had gotten into H.M.’s system. It seems to us, that for the relationship between H.M. and Mother to improve, and for these dependency proceedings to terminate successfully, SSA will have to accept its responsibility to see this matter to the end and treat Mother and Father with impartiality.

DISPOSITION

The order denying Mother’s section 388 petitions is affirmed.

FYBEL, J.

WE CONCUR:

O’LEARY, P. J.

IKOLA, J.